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State v. Coniconde Appellant's Brief Dckt. 42924

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42924
Plaintiff-Respondent,)	
)	KOOTENAI COUNTY NO. CR 2010-18513
v.)	
)	
MICHAEL WATSON)	
CONICONDE,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Michael Watson Coniconde appeals from the district court's order relinquishing jurisdiction and executing a unified sentence of four years, with two years fixed, for possession of a controlled substance, methamphetamine. He asserts that the district court abused its discretion by relinquishing jurisdiction and by denying his Idaho Criminal Rule (*hereinafter*, Rule) 35 motion for reduction of sentence.

Statement of the Facts & Course of Proceedings

In 2010, Mr. Coniconde was charged with one count of possession of a controlled substance, methamphetamine, and one count of possession of drug

paraphernalia. (R., p.49.) Mr. Coniconde pleaded guilty, and the district court imposed a unified sentence of four years, with two years fixed, and the court retained jurisdiction. (R., p.97.) Following the period of retained jurisdiction, the court suspended the sentence and placed Mr. Coniconde on probation. (R., p.106.)

In October, 2013, the State filed a report of probation violation, asserting that Mr. Coniconde failed to report for a scheduled appointment, failed to respond to a letter directing him to report; had reported an incorrect telephone number, and had changed his residence. (R., p.142.) Mr. Coniconde admitted to the violations. (R., p.164.)

The district court revoked probation but retained jurisdiction. (R., p.166.) Following the period of retained jurisdiction the court relinquished jurisdiction and executed the sentence. (R., p.194.) Mr. Coniconde appealed. (R., p.197.) He subsequently filed a Rule 35 motion, which was denied. (4/30/15 Tr., p.22, Ls.4-14.) Mr. Coniconde asserts that the district court abused its discretion by relinquishing jurisdiction and by denying his Rule 35 motion.

ISSUES

1. Did the district court abuse its discretion when it relinquished jurisdiction?
2. Did the district court abuse its discretion when it denied Mr. Coniconde's Rule 35 motion for reduction of sentence?

ARGUMENT

I.

The District Court Abused Its Discretion When It Relinquished Jurisdiction

The decision to relinquish jurisdiction is discretionary; the standard of review is whether the district court abused its discretion. *State v. Seiber*, 117 Idaho 637, 641

(Ct. App.1989). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978) (*overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001))).

Bruce Page, a drug and alcohol rehabilitation specialist at the North Idaho Correctional Institution, testified at the rider review hearing. (1/8/15 Tr., p.5, Ls.8-13.) He testified that he saw a great deal of change in Mr. Coniconde during the course of the rider – once he started to realize he need to do “something different,” Mr. Coniconde “became kind of an expert in the rules here.” (1/8/15 Tr., p.9, L.19 – p.10, L.2.) He even began helping other inmates with their cognitive self change and relapse prevention assignments. (1/8/15 Tr., p.10, Ls.9-13.)

Mr. Page testified that Mr. Coniconde completed the relapse prevention program. (1/8/15 Tr., p.14, Ls.16-19.) He had received the highest grades in many of his cognitive self change projects. (1/8/15 Tr., p.15, Ls.2-14.)

Mr. Coniconde then testified. He testified that he had in fact completed the cognitive self change workbook, but he turned it into his case manager and did not get it back until a week later, when it had not been signed off; the only comment he received was to “practice the new thinking logs.” (1/8/15 Tr., p.30, Ls.12-25.) A week later he learned that the Department was recommending relinquishment. (Tr., p.30, L.25.) Mr. Coniconde did acknowledge that he received DOR’s, but during the course of his rider he had made “major changes.” (1/8/15 Tr., p.36, Ls.18-22.)

Further, Mr. Coniconde had a probation plan. He would be residing at his grandfather's residence in Hauser Lake and would go to work at Zimmerman Framing. (1/8/15 Tr., p.37, Ls.10-25.) He had people who could give him transportation to work and the probation office. (1/8/15 Tr., p.38, Ls.1-6.)

Following his testimony, Mr. Coniconde informed the court,

I just ask for another chance to prove that I can follow the rules, not just big rules or small rules but all the rules, and be compliant with probation, to put this felony behind me and move forward with my life.

And thank you for the opportunity of the rider. This nine months I spent in Cottonwood was really enlightening on just where I've gone wrong in the past, and the – not just that, but the steps I need to make in the future to prevent that from repeating.

(1/8/15 Tr., p.49, Ls.5-14.)

Mr. Page recognized a change in Mr. Coniconde during the course of the rider. Mr. Coniconde acknowledged that change. He acknowledged his difficulties at the beginning but made changes to comply with the rules. Mr. Coniconde completed relapse prevention. Considering that he made positive changes during the rider, acknowledged that he needed to follow the rules, and had a probation plan, Mr. Coniconde asserts that the district court abused its discretion by relinquishing jurisdiction.

II.

The District Court Abused Its Discretion When It Denied Mr. Coniconde's Rule 35 Motion For Reduction Of Sentence

An order denying a motion for reduction of a sentence under Rule 35 is reviewed for an abuse of discretion. *State v. Hillman*, 143 Idaho 295, 296 (Ct. App. 2006). If the sentence is found to be reasonable at the time of pronouncement, the defendant must

then show that it is excessive in view of the additional information presented with the motion for reduction. *Id.*

Mr. Coniconde testified at his Rule 35 hearing. (See generally, 4/30/15 Tr.) He informed the court that he had completed the 30-day orientation phase of the TC program. (4/30/15 Tr., p.6, Ls.12-15.) He had recently presented as his first group and presented at a level six skill level. (4/30/15 Tr., p.6, Ls.16-19.) By the time he completes the TC programming, Mr. Coniconde will be nine months in to his indeterminate time. (4/30/15 Tr., p.7, Ls.16-18.)

Once he is parole eligible, Mr. Coniconde has plans for employment. (4/30/15 Tr., p.8, Ls.21-25.) He had a job available at Zimmerman Framing and had opportunities with First Choice Framing and Jed Wells Construction. (4/30/15 Tr., p.9, Ls.1-4.) Mr. Coniconde would reside at his grandfather's place in Hauser Lake. (4/30/15 Tr., p.9, Ls.5-6.)

Further, Mr. Coniconde had a treatment plan. He was planning on taking the "second act CSC at probation and parole" and would attend both N.A. and A.A. meetings. (4/30/15 Tr. p.9, Ls.10-21.) He was also planning on attending the Celebrate Recovery group at the Real Life Ministries. (4/30/15 Tr., p.9, Ls.17-22.) Mr. Coniconde understood his need for treatment and state that he would attend those programs even if he was not on probation or parole. (4/30/15 Tr., p.9, Ls.23-25.)

The district court denied the Rule 35 motion. (4/30/15 Tr., p.22, Ls.4-14.) Mr. Coniconde submits that, in light of the information concerning his plans for employment, his progress with programming, his treatment plan, and the support of his

family, that the district court abused its discretion by denying his Rule 35 motion for reduction of sentence.

CONCLUSION

Mr. Coniconde respectfully requests that the order relinquishing jurisdiction be vacated and the case remanded for further proceedings. Alternatively, he requests that this Court reduce his sentence as it deems appropriate or remand this case for a new Rule 35 hearing.

DATED this 2nd day of November, 2015.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

MICHAEL WATSON CONICONDE
INMATE #99574
ISCC
PO BOX 70010
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BENJAMIN R SIMPSON
DISTRICT COURT JUDGE
E-MAILED BRIEF

MEGAN E MARSHALL
KOOTENAI COUNTY PUBLIC DEFENDER'S OFFICE
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KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

JMC/eas